

By: Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
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Deputy Attorney General
4 State Bar No. 244388
California Department of Justice
5 1300 I Street, Suite 125
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6 Sacramento, CA 94244-2550
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2017-029082

14 **JOAN SUSAN ELKINS, M.D.**
15 P.O. Box 238
Kennebunk, ME 04043

16 Physician's and Surgeon's Certificate No. A 45804,

17 Respondent.

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY
ORDER**

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19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California ("Board"). She brought this action solely in her official capacity and is
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, by John
25 S. Gatschet, Deputy Attorney General.

26 2. Respondent Joan Susan Elkins, M.D. ("Respondent") is represented in this
27 proceeding by attorney Gregory Abrams, Esq., whose address is:

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1 Gregory Abrams
2 Abrams Health Law
3 6045 Shirley Drive
4 Oakland, CA 94611

5 3. On or about February 27, 1989, the Board issued Physician's and Surgeon's
6 Certificate No. A 45804 to Respondent. That Certificate was in full force and effect at all times
7 relevant to the charges brought in Accusation No. 800-2017-029082 and will expire on October
8 31, 2018, unless renewed.

9 **JURISDICTION**

10 4. Accusation No. 800-2017-029082 was filed before the Board, and is currently
11 pending against Respondent. The Accusation and all other statutorily required documents were
12 properly served on Respondent on March 13, 2018. Respondent timely filed her Notice of
13 Defense contesting the Accusation.

14 5. A copy of Accusation No. 800-2017-029082 is attached as Exhibit A and
15 incorporated herein by reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 800-2017-029082. Respondent also has carefully read,
19 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
20 and Order.

21 7. Respondent is fully aware of her legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
23 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
24 to the issuance of subpoenas to compel the attendance of witnesses and the production of
25 documents; the right to reconsideration and court review of an adverse decision; and all other
26 rights accorded by the California Administrative Procedure Act and other applicable laws.

27 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
28 every right set forth above.

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CULPABILITY

9. Respondent understands that the charges and allegations in Accusation No. 800-2017-029082, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the causes of discipline alleged in the Accusation and that those causes constitute cause for discipline of her Physician's and Surgeon's Certificate No. A 45804. Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.

11. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Physician's and Surgeon's Certificate without further process.

12. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2017-029082 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

RESERVATION

13. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

14. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . . stipulation for surrender of a license."

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1 15. This Stipulated Surrender of License and Disciplinary Order shall be subject to
2 approval of the Executive Director on behalf of the Medical Board. The parties agree that this
3 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive
4 Director for her consideration in the above-entitled matter and, further, that the Executive
5 Director shall have a reasonable period of time in which to consider and act on this Stipulated
6 Surrender of License and Disciplinary Order after receiving it. By signing this stipulation,
7 respondent fully understands and agrees that she may not withdraw her agreement or seek to
8 rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board,
9 considers and acts upon it.

10 16. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall
11 be null and void and not binding upon the parties unless approved and adopted by the Executive
12 Director on behalf of the Board, except for this paragraph, which shall remain in full force and
13 effect. Respondent fully understands and agrees that in deciding whether or not to approve and
14 adopt this Stipulated Surrender of License, the Executive Director and/or the Board may receive
15 oral and written communications from its staff and/or the Attorney General's Office.
16 Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board,
17 any member thereof, and/or any other person from future participation in this or any other matter
18 affecting or involving respondent. In the event that the Executive Director on behalf of the Board
19 does not, in her discretion, approve and adopt this Stipulated Surrender of License, with the
20 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
21 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
22 hereto. Respondent further agrees that should this Stipulated Surrender of License be rejected for
23 any reason by the Executive Director on behalf of the Board, respondent will assert no claim that
24 the Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
25 discussion and/or consideration of this Stipulated Surrender of License or of any matter or matters
26 related hereto.

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17. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

18. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 45804, issued to Respondent JOAN SUSAN ELKINS, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A 45804 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a physician in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.

4. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2017-029082, shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Gregory Abrams, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

8/22/18


JOAN SUSAN ELKINS, M.D.
Respondent

I have read and fully discussed with Respondent Joan Susan Elkins, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED:

8/26/18


GREGORY ABRAMS, Esq.
Attorney for RespondentENDORSEMENT

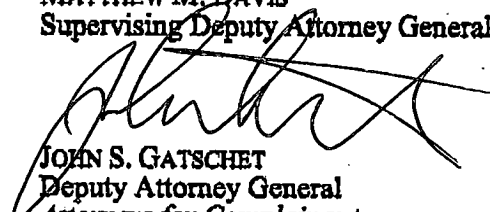
The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated:

8-28-18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


JOHN S. GATSCHET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-029082

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 JOHN S. GATSCHET
Deputy Attorney General
4 State Bar No. 244388
California Department of Justice
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 210-7546
7 Facsimile: (916) 327-2247

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 13 20 18
BY [Signature] ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2017-029082

14 **Joan Susan Elkins, M.D.**
c/o Southern Maine Hospital Center
15 2 Livewell Dr.
Kennebunk, ME 04043-6762

A C C U S A T I O N

16 Physician's and Surgeon's Certificate No. A 45804,

17 Respondent.
18

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs ("Board").

25 2. On or about February 27, 1989, the Medical Board issued Physician's and Surgeon's
26 Certificate Number A 45804 to Joan Susan Elkins, M.D. ("Respondent"). That license was in full
27 force and effect at all times relevant to the charges brought herein and will expire on October 31,
28 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

5. Section 493 of the Code states, in pertinent part:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

6. Section 2227 of the Code provides, in pertinent part, that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

7. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 “...

4 “(e) The commission of any act involving dishonesty or corruption that is substantially
5 related to the qualifications, functions, or duties of a physician and surgeon.

6 “(f) Any action or conduct which would have warranted the denial of a certificate.

7 “...”

8 8. Section 2236 of the Code states:

9 “(a) The conviction of any offense substantially related to the qualifications, functions, or
10 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
11 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
12 evidence only of the fact that the conviction occurred.

13 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical
14 Board of the pendency of an action against a licensee charging a felony or misdemeanor
15 immediately upon obtaining information that the defendant is a licensee. The notice shall identify
16 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall
17 also notify the clerk of the court in which the action is pending that the defendant is a licensee,
18 and the clerk shall record prominently in the file that the defendant holds a license as a physician
19 and surgeon.

20 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
21 after the conviction, transmit a certified copy of the record of conviction to the board. The
22 division may inquire into the circumstances surrounding the commission of a crime in order to fix
23 the degree of discipline or to determine if the conviction is of an offense substantially related to
24 the qualifications, functions, or duties of a physician and surgeon.

25 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
26 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
27 shall be conclusive evidence of the fact that the conviction occurred.”

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1 9. Section 2239 of the Code states:

2 “(a) The use or prescribing for or administering to himself or herself, of any controlled
3 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
4 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
5 any other person or to the public, or to the extent that such use impairs the ability of the licensee
6 to practice medicine safely or more than one misdemeanor or any felony involving the use,
7 consumption, or self-administration of any of the substances referred to in this section, or any
8 combination thereof, constitutes unprofessional conduct. The record of the conviction is
9 conclusive evidence of such unprofessional conduct.

10 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
11 deemed to be a conviction within the meaning of this section. The Medical Board may order
12 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
13 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
14 affirmed on appeal or when an order granting probation is made suspending imposition of
15 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
16 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
17 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
18 indictment.”

19 10. California Code of Regulations, title 16, section 1360, states:

20 “For the purposes of denial, suspension or revocation of a license, certificate or permit
21 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
22 considered to be substantially related to the qualifications, functions or duties of a person holding
23 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
24 evidences present or potential unfitness of a person holding a license, certificate or permit to
25 perform the functions authorized by the license, certificate, or permit in a manner consistent with
26 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to the
27 following: Violation or attempting to violate, directly or indirectly, or assisting in or abetting the
28 violation of, or conspiring to violate any provision of the Medical Practice Act.”

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverage in a Dangerous or Injurious Manner)**

3 11. Respondent's license is subject to disciplinary action under sections 2234,
4 subdivisions (a) and (f), and 2239 of the Code in that she used alcohol to the extent and in such a
5 manner to endanger herself and the public by driving under the influence on two separate
6 occasions. The circumstances are as follows:

7 January 26, 2016 Arrest

8 12. On or about January 26, 2016, at approximately 8:21 p.m., the Kennebunk Police
9 Department¹ received a call from a concerned citizen that Respondent had appeared impaired
10 when she picked her daughter up from baton practice. A Kennebunk Police Officer ("P.O.")
11 responded and proceeded to make a traffic stop on Respondent's vehicle, a gray Toyota van with
12 license plate 2JSE4ME. P.O. approached the vehicle and observed Respondent's ten-year-old
13 daughter in the back seat. As P.O. spoke with Respondent he observed that Respondent's speech
14 pattern was slurred and garbled. P.O. asked Respondent if she had consumed alcohol or whether
15 she had consumed medications that would adversely effect driving. Respondent denied
16 consuming alcohol or medications.

17 13. P.O. had Respondent exit her vehicle. P.O. appeared to be unsteady on her feet and
18 she attributed her lack of balance to working long hours. P.O. had Respondent perform a number
19 of field sobriety tests. Respondent failed to properly perform the field sobriety tests as explained
20 and exhibited signs of early onset nystagmus. P.O. placed Respondent under arrest for operating a
21 motor vehicle under the influence. Respondent continued to repeat that she had not had any
22 alcoholic beverages and that she had gone straight from work at the Southern Maine Health
23 Center to pick up her daughter from baton practice. After Respondent was placed into custody,
24 P.O. performed an inventory of Respondent's vehicle. P.O. observed an open bottle of Absolute
25 Vodka in a brown bag placed on the back seat of Respondent's vehicle.

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28 ¹ Located in Kennebunk, Maine

1 14. P.O. brought Respondent to the Kennebunk Police Department for a breath test. At
2 9:03 p.m., P.O. began observing Respondent before administering the breath test. At 9:30 p.m.
3 and 9:32 p.m., Respondent provided two breath samples of .24 % blood alcohol content.

4 15. On March 9, 2016, Respondent was charged in a criminal complaint titled *State of*
5 *Maine v. Joan Elkins*, in Biddeford District Court Case No. 16-20298, with operating a vehicle
6 under the influence of alcohol and with reckless conduct. Respondent was ordered to not
7 consume alcohol as part of her release from custody pending criminal proceedings. On December
8 6, 2016, Biddeford District Court Case No. 16-20298 was dismissed because Respondent pled to
9 other charges and P.O. was unavailable to testify.

10 April 10, 2016 Arrest

11 16. On April 10, 2016, at approximately 6:02 p.m., the Kennebunkport Police Department
12 received a call that a gray Toyota van, license plate 2JSE4ME, was being driven erratically. The
13 caller was concerned that the driver was impaired. Kennebunkport Police and Kennebunk Police
14 were unable to immediately locate the van.

15 17. At approximately 7:35 p.m., an Officer from the Kennebunk Police Department
16 spotted the van. A second Officer ("P.O. 2") made contact and followed the gray van. P.O. 2
17 observed the van drifting within the lane and slow down to 20 MPH in a 35 MPH zone. P.O. 2
18 initiated a traffic stop.

19 18. P.O. 2 approached and observed three occupants inside the van. Respondent was
20 seated in the driver seat, Respondent's mother was seated in the front passenger seat, and
21 Respondent's now 11-year-old daughter was sitting in the back seat. Respondent stated that they
22 were returning from a birthday dinner for Respondent's 11-year-old daughter. P.O. 2 informed
23 Respondent that there had been a complaint that she was driving erratically and asked Respondent
24 how much alcohol she had consumed. Respondent stated that she had not had any alcohol to
25 drink since she was arrested by the Kennebunk Police Department in January 2016.

26 19. P.O. 2 had Respondent exit from the vehicle and perform a number of field sobriety
27 tests. Respondent failed to properly perform the field sobriety tests as explained and exhibited

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1 signs of early onset nystagmus. P.O. 2 placed Respondent under arrest for operating a vehicle
2 under the influence of alcohol.

3 20. P.O. 2 brought Respondent back to the Kennebunk Police Department to perform a
4 breath test. At approximately 8:18 p.m., P.O. 2 began observing Respondent before administering
5 the breath test. At 8:38 p.m., Respondent provided a breath sample of .15 % blood alcohol
6 content and at 8:41 p.m. provided a breath sample of .14 % blood alcohol content.

7 21. On May 25, 2016, Respondent was charged in a criminal complaint titled *State of*
8 *Maine v. Joan Elkins*, in Biddeford District Court Case No. 16-20946, violating a condition of
9 custodial release by consuming alcohol, with operating a vehicle under the influence of alcohol,
10 and endangering the welfare of a child. On December 7, 2016, Respondent pled guilty to
11 violation a condition of custodial release, and with operating a vehicle under the influence of
12 alcohol. The charge of child endangerment was dismissed. Respondent was placed on two years'
13 administrative release, ordered to serve 30 days on the alternative sentencing program, pay
14 \$1000.00 in fines, and suspended from operating a vehicle for 150 days. As part of Respondent's
15 administrative release, she was ordered to not possess or use alcohol and she was ordered to
16 remain under the supervision of the Maine Medical Association, Medical Professional's Health
17 Program.²

18 22. Respondent's conduct as described above, driving under the influence of alcohol with
19 her child in the vehicle on two separate occasions, constitutes the use of alcohol to an extent and
20 in such a manner to endanger herself and the public and constitutes unprofessional conduct in
21 violation of sections 2234, subdivision (a) and (f), and 2239 of the Code and hereby provides
22 cause for discipline to Respondent's license.

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27 ² The Maine Medical Association chose to not discipline Respondent's medical license
28 upon her agreement to enter the Medical Professional's Health Program.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Conduct)**

3 29. Respondent's license is subject to disciplinary action under section 2234 of the Code,
4 in that he has committed general unprofessional conduct as more particularly alleged in
5 paragraphs 11 through 22 above, which are incorporated by reference and re-alleged as if fully set
6 forth therein.

7 **PRAYER**

8 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Medical Board of California issue a decision:


10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 45804,
11 issued to Joan Susan Elkins, M.D.;

12 2. Revoking, suspending or denying approval of Joan Susan Elkins, M.D.'s authority to
13 supervise physician assistants and advanced practice nurses;

14 3. Ordering Joan Susan Elkins, M.D., if placed on probation, to pay the Board the costs
15 of probation monitoring; and

16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: March 13, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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